REMARKS

The Applicants respectfully request further examination and consideration of the claims in view of the above amendments and the arguments set forth fully below. Claims 1-38 were pending in this application. Within the Office Action, Claims 1-8, 12-27, and 31-38 have been rejected, and Claims 9-11 and 28-30 have been objected to. Accordingly, Claims 1-38 are currently pending in this application.

Rejection of Claims 1-8 , 16 Under 35 U.S.C. § 102

Within the Office Action Claims 1-8, 16, 20-27 and 35 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Patent No. 6,416,097 to O'Rourke (hereinafter O'Rourke '097). The Applicants respectfully disagree.

The present invention is directed to a manure extraction tool. Claim 1 requires three detachable sections, namely a scoop, a motor assembly, and a handle. The scoop head is coupled to the motor assembly. The scoop handle, which houses the battery pack, is coupled to the motor assembly. As stated in the "Detailed Description of a Preferred Embodiment" on page 9, lines 2-7, the detachable scoop head, detachable DC motor, and detachable scoop handle battery promotes convenient maintenance, repair, and replacement.

The Office Action states that the O'Rourke '097 shows a device comprising a detachable scoop head, a detachable motor assembly, and a detachable handle. The applicants respectfully traverse this position. First, O'Rourke '097 teaches a vibrating sand sifting toy that has a selectively activated vibrating mechanism mounted in a portion of the toy for causing oscillatory vibration of a surface portion of the toy. However, O'Rourke '097 does not teach a three sectioned device. In one embodiment of O'Rourke '097, the handle portion 14 is detachable from the scoop portion 12. The handle 14 includes and is integrally formed with the battery 26, DC motor 24, and thumb switch 28–collectively the vibrating mechanism 22. The handle portion 14 is not detachable from the vibrating mechanism 22. In another embodiment of O'Rourke '097, only the predetermined template 62 is removable from the assembly. Again in the second embodiment, the handle portion 14 is not detachable from the vibrating mechanism 22.

Second, in all embodiments of O'Rourke '097, the vibrating mechanism 22 consists of a DC motor 24, a battery 26, and a thumb switch 28. In contrast to the present invention, the components of the vibrating mechanism cannot be separated. That is, the DC motor 24 is not detachable from the battery 26. The present invention allows separation between the scoop head and the DC motor and between the DC motor and the battery. Therefore, the present invention has three main, detachable sections. O'Rourke '097 is distinguishable from the present invention since it has only has two detachable sections.

Additionally, O'Rourke '097 teaches a sand-sifting toy where "[t]he handle portion 14 of the vibrating sand scoop toy 10 is hollow so as to define a housing for the vibrating mechanism 22." [O'Rourke '097, col. 2, lines 24-26] Furthermore, O'Rourke '097 teaches that the "[m]otor 24 is rigidly affixed within an enlarged portion 14' of the handle portion 14 and preferably is disposed in contact with the interior walls of the handle portion..." [O'Rourke '097, col. 2, lines 46-48] Figures 1, 3, and 4 of O'Rourke '097 also show clearly that the vibrating assembly is within the handle . Moreover, O'Rourke '097 teaches the "scoop portion 12 of the vibrating sand scoop toy 10 ... is removable from the handle portion 14." [O'Rourke '097, col. 3 , lines 13-15] However, no where in O'Rourke '097, is it taught that a detachable motor assembly is coupled to the scoop head via a connector. O'Rourke '097 only teaches the motor assembly within the handle, and then the handle connected to the scoop, but does not teach a detachable motor assembly coupled to the scoop head via a connector.

A 35 U.S.C. § 102(b) rejection requires the reference to teach, either implicitly or explicitly, every aspect of the present invention. O'Rourke '097 does not teach a three sectioned design. O'Rourke does not teach separation of the DC motor from the battery. *Furthermore, O'Rourke '097 does not teach a detachable motor assembly coupled to the scoop head via a connector.* Thus, O'Rourke '097 does not teach every aspect of the present invention. Accordingly, the rejection under 35 U.S.C. § 102(b) is improper. For at least this reason, Claim 1 is not anticipated by O'Rourke '097.

Claim 1 also requires that the handle includes a weighted battery positioned to operate as a counterweight. The natural placement of the operator's hands when operating and the stand location of the present invention is between the scoop head and the distal end of the scoop handle. This hand and stand positioning combined with the strategic battery location at the

distal end of the scoop handle creates a counterweight effect which minimizes operator strain and effort associated with substantial manure removal.

The Office Action states that the O'Rourke '097 inherently creates a counterweight. The Applicants respectfully traverse this position. The O'Rourke '097 device does not teach an inherent counterweight. In particular, O'Rourke '097 teaches a handle portion 14 with a thumb switch 28 to activate the DC motor 24. Given the location of the thumb switch 28 the user's scooping hand will necessarily be positioned with the operator's four fingers under the battery 26. This positioning of the user's hand defines the fulcrum at or very near the distal end of the handle 14 where the battery 26 is housed. Accordingly, the weight of the battery cannot act as a counterweight but must instead act as an additive weight. All components of the scoop are positioned either at the fulcrum or between the fulcrum and the forward scoop portion 12. Since there are no components such as the DC motor, batteries, or thumb switch located on the opposite side of the fulcrum, there can be no counterweight effect.

Furthermore, there is no need for counterweight effect in the vibrating sand toy 10. Such a toy, as evidenced by the thumb switch and the handle length approximately the size of AA battery, is designed to be operated for pleasure with one hand and minimal effort. The vibrating sand toy 10 is not designed for strenuous lifting. In contrast, the present invention has batteries placed well behind the fulcrum creating a significant leverage effect. This leverage effect reduces strain on the operator who will be repeatedly scooping, vibrating, and lifting manure. Therefore, O'Rourke '097 is distinguishable because it does not inherently teach a counterweight, and by the necessary placement of the user's hand behind the fulcrum, O'Rourke '097 teaches away from a counterbalance. *For example, if the toy taught in O'Rourke were completely hollow, a child would still be able to pick up sand just as easily since the handle weight for a small shovel has no effect on the lifting potential; however, for the present invention which comprises a long handle for lifting heavy mounds of bedding and manure, the additional power pack at the end of the handle greatly increases a user's lifting potential by adding a counterweight. If the present invention included a hollow handle, the user would have to strain much more to lift the bedding and manure as there is no additional force helping the lever action when lifting. Hence, there is a significant and patentable difference between the weight within a short toy shovel which is not a counterweight and the counterweight of the*

present invention in the long handle for lifting heavy bedding and manure. For at least this reason, Claim 1 is allowable over O'Rourke '097.

The independent Claim 1 is directed to a manure extracting device. The manure extracting device comprises a handle, a motor, and a scoop head. The scoop head is coupled to the motor, and the motor is coupled to the handle which houses the battery pack. Each component is detachable from the others components. As stated above, O'Rourke '097 does not teach that the scoop assembly is comprised of three sections, as in Claim 1. Instead, the scoop in O'Rourke '097 is only comprised of two sections. *Furthermore, O'Rourke '097 does not teach a detachable motor assembly coupled to the scoop head via a connector. O'Rourke only teaches a motor assembly within the handle, hence not coupled to the scoop head via a connector.* Thus, O'Rourke '097 is distinguishable from Claim 1 in the present invention. For at least these reasons, the independent Claim 1 is allowable over the teachings of O'Rourke.

Claims 2-8 and 16 are dependent on the independent Claim 1. As stated above, Claim 1 is allowable over the teachings of O'Rourke '097. Accordingly, Claims 2-8 and 16 are all also allowable as being dependent upon an allowable base claim.

Rejection of Claims 20-27 and 35 Under 35 U.S.C. § 102

Within the Office Action Claims 20-27 and 35 have been rejected under 35 U.S.C. § 102(b) as being anticipated by O'Rourke '097. The Applicants respectfully disagree.

The present invention is directed to a method of making a manure extraction tool. The method in Claim 20 requires using three detachable sections, namely a scoop, a motor assembly, and a handle. The method further includes coupling the scoop head to the motor and coupling the motor to the handle which houses the battery pack.

The Office Action states that O'Rourke '097 teaches a method using a detachable scoop head, a detachable motor assembly, and a detachable handle. The applicants respectfully traverse this position. First, O'Rourke '097 teaches a method of making a vibrating sand sifting toy. However, O'Rourke '097 does not teach a method of making a three sectioned device. The handle portion 14 is not detachable from the vibrating mechanism 22. Therefore, the method of making a sifting device that O'Rourke teaches is distinguishable from the method in the present invention.

Second, O'Rourke '097 teaches a method of making a sand sifting toy with a vibrating mechanism 22 consisting of a DC motor 24, a battery 26, and a thumb switch 28. In contrast to the present invention, the components of the vibrating mechanism cannot be separated. That is, the method in O'Rourke '097 teaches a method of making a vibrating mechanism where the DC motor 24 is not detachable from the battery 26. The present invention teaches a method of making a vibrating mechanism where the scoop head, DC motor, and batteries can all be seperated. Therefore, the present invention teaches a method of making a device using three main, detachable sections. O'Rourke '097 is distinguishable from the present invention since it has only teaches a method using two detachable sections.

Additionally, O'Rourke '097 teaches a sand-sifting toy where "[t]he handle portion 14 of the vibrating sand scoop toy 10 is hollow so as to define a housing for the vibrating mechanism 22." [O'Rourke '097, col. 2, lines 24-26] Furthermore, O'Rourke '097 teaches that the "[m]otor 24 is rigidly affixed within an enlarged portion 14' of the handle portion 14 and preferably is disposed in contact with the interior walls of the handle portion..." [O'Rourke '097, col. 2, lines 46-48] Figures 1, 3, and 4 of O'Rourke '097 also show clearly that the vibrating assembly is within the handle. Moreover, O'Rourke '097 teaches the "scoop portion 12 of the vibrating sand scoop toy 10 ... is removable from the handle portion 14." [O'Rourke '097, col. 3, lines 13-15] However, no where in O'Rourke '097, is it taught that a detachable motor assembly is coupled to the scoop head via a connector. O'Rourke '097 only teaches the motor assembly within the handle, and then the handle connected to the scoop, but does not teach a detachable motor assembly coupled to the scoop head via a connector.

A 35 U.S.C. § 102(b) rejection requires the reference to teach, either implicitly or explicitly, every aspect of the present invention. O'Rourke '097 does not teach a method using three sections. O'Rourke does not teach a method of making a device wherein the DC motor and the battery can be separated. *Furthermore, O'Rourke '097 does not teach a method of making a device with a detachable motor assembly coupled to the scoop head via a connector.* Thus, O'Rourke '097 does not teach every aspect of the present invention. Accordingly, the rejection under 35 U.S.C. § 102(b) is improper. For at least this reason, Claim 1 is not anticipated by O'Rourke '097.

The method of Claim 20 also requires using strategically positioned batteries as a counterweight. Again, the natural placement of the operator's hands when operating and the stand location of the present invention is between the scoop head and the distal end of the scoop handle. Making the manure extraction device in this way creates a counterweight effect which minimizes operator strain and effort associated with substantial manure removal.

The Office Action states that the O'Rourke '097 inherently teaches a method of making the extraction device with a counterweight. The Applicants respectfully traverse this position. The O'Rourke '097 device does not teach a method of making a manure extraction device with an inherent counterweight. In particular, O'Rourke '097 teaches using a handle portion 14 with a thumb switch 28 to activate the DC motor 24. Given the location of the thumb switch 28 the user's scooping hand will necessarily be positioned with the operator's four fingers under the battery 26. This positioning of the user's hand defines the fulcrum at or very near the distal end of the handle 14 where the battery 26 is housed. Accordingly, the weight of the battery cannot act as a counterweight but must instead act as an additive weight. Since O'Rourke does not teach a method of making a manure extraction device with three sections, such as the DC motor, batteries, or thumb switch, located on the opposite side of the fulcrum, there can be no counterweight effect and the methods are distinguishable. *As described in the example above, there is a significant and patentable difference between the weight of a toy handle and the counterweight of a tool that uses leverage to aid in a person lifting heavy bedding and manure.*

The independent Claim 20 is directed to a method of making a manure extracting device. As stated above, O'Rourke '097 does not teach a method of making a three sectioned device, as in Claim 20. Instead, the scoop in O'Rourke '097 is only comprised of two sections. Also, O'Rourke '097 does not teach a method of making a scoop with a counterweight. *Additionally, O'Rourke '097 does not teach providing a detachable motor assembly coupled to the scoop head via a connector. O'Rourke only teaches a motor assembly within the handle, hence not coupled to the scoop head via a connector.* Thus, O'Rourke is distinguishable from Claim 20 in the present invention. For at least these reasons, the independent Claim 20 is allowable over the teachings of O'Rourke.

Claims 21-27 and 35 are dependent on the independent Claim 20. As stated above, Claim 20 is allowable over the teachings of O'Rourke '097. Accordingly, Claims 20-27 and 35 are all also allowable as being dependent upon an allowable base claim.

Rejections Under 35 U.S.C. § 103

Within the Office Action Claims 12-15, 17-19, 31-34, and 36-38 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Patent No. 6,416,097 (O'Rourke '097) in view of Patent No. 6,022,058 (O'Rourke '058) . The Applicants respectfully disagree.

Claims 12-15 and 17-19 are dependent on the independent Claim 1; Claims 31-34 and 36-38 are dependent on the independent Claim 20. As stated above, Claims 1 and 20 are allowable as independent base claims. Accordingly, Claims 12-15, 17-19, 31-34, and 36-38 are all also allowable as being dependent upon an allowable base claim.

For the reasons given above, the Applicants respectfully submit that the Claims 1-38 are in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, the Examiner is encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
HAVERSTOCK & OWENS LLP

Dated: 11-8-05

By: _____

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